STREET RAILWAYS AND THE INTERSTATE COMMERCE ACT.

It has not been popularly understood that the Interstate Commerce Commission has jurisdiction over ordinary street railways. At the time of the enactment of the Cullom Law,[1] which created the Commission, the typical street railway was the so-called "horse-car" line of a few miles in length, devoted exclusively to the transportation of passengers and operated only in well settled communities. The debates preceding the passage of the Act to Regulate Commerce were concerned with the alleged abuses connected with the management of the commercial railroad then and, for the most part, still operated by steam.

With the development of the modern "trolley line," the interurban street railway carrying passengers and express matter and sometimes freight, and the present day rapid movement toward the electrification of portions of the steam roads where they enter the great centers of commerce and population, the situation has changed. The street railway has tended to become very similar to the commercial railroad. In communities like New York City, Buffalo, Baltimore, Washington, Philadelphia, Chicago and other important cities located near state boundaries, there are now developing street railway systems which in point of speed, service and equipment compete very successfully with the steam roads, and, it is significant to note, fairly interlace and obliterate state lines. Thousands of commuters are daily transported over street railways from Rhode Island to Massachusetts, from Connecticut to New York, from the District of Columbia to Maryland. These railways in numerous cases feed, tap and connect with the steam roads, and in some instances have arrangements for through routes and joint rates. If the steam roads require federal supervision in respect to their engagement in interstate commerce it is becoming extremely pertinent to inquire whether or not the trolley roads engaged in interstate transportation are subject to the same control.

The question was first presented to the Interstate Commerce Commission in the case of *Willson* v. *Rock Creek Railway Company*.[2] This case was decided by the Commission in 1897. The defendant company operated an electric street railway seven and

[1] 1887.

[2] (1897) 7 I. C. C. Rep. 83, 88, 90.

one-half miles in length, and extending from Washington, in the District of Columbia, to Chevy Chase Lake, in the State of Maryland. The road was the ordinary "trolley" line and did not hold itself out as a carrier of freight. It was urged on behalf of the defendant that the Act to Regulate Commerce applied only to the ordinary steam railroads engaged in interstate commerce and that street surface roads for urban and interurban passenger travel were exempt from its provisions. The Commission held otherwise, saying, through Commissioner Knapp,

"It may be conceded that this class of railroads was not specifically within the contemplation of the framers of that law, for the evils which it was intended to remedy would, in the nature of the case, but rarely arise in the management of such roads and their dealings with the public. But the terms of the statute in this regard are broad and general, and it contains no exception indicating a design to exclude from its operation those interstate roads which are constructed upon public highways, to provide the means for local passenger transportation in the streets of towns and cities and their various suburbs. We see no reason to doubt that the authority of this enactment may be invoked for the regulation of carriers like the defendant, if their business is actually interstate, whenever occasion arises for subjecting them to its restraints and requirements."

There was a dissenting opinion by Commissioner Prouty, concurred in by Commissioner Yoemans, in which the learned Commissioner says:

"I am of the opinion, however, that the Commission has no jurisdiction of the defendant's railway, for the reason that the Act to Regulate Commerce does not include a street railroad. No importance is attached to the kind of motive power. The term 'railroad' is undoubtedly broad enough to include a street railway, and often does include it in statutory enactments. There is, however, a wide distinction between a railroad in the ordinary acception of that term and a street railroad, and whether the term 'railroad,' when used in a particular statute, does or does not include a street railway, is a question of legislative intent in each particular case. Looking to the scope and substance of the Act to Regulate Commerce, I do not think that Congress intended to include street railways."

The question does not seem to have come before the Commission again in any form until 1907, when in the case of *Chicago & Milwaukee Electric Railroad Company* v. *Illinois Central Railroad Company*[3] it was held, in an opinion by Commissioner Har-

[3](1907) 13 I. C. C. Rep. 20, 27.

lan, that the Act to Regulate Commerce makes no distinction between railroads operated by electricty and those that use steam locomotives.

"Both are subject to the act when engaged in interstate transportation and are entitled to equal consideration in any controversy before us. Moreover, progress in the science of electricity and the rapid increase of new devices for its application have led many practical railroad men to think that we may be measurably near its general use as the chief motive power in transportation."

This ruling is not broad enough to cover the general question of the Commission's jurisdiction over ordinary street railways which may be partly engaged in interstate transportation. The electric line in the case last mentioned was laid in part on highways, and its main traffic was that of an interurban street car company; but it was about forty miles long; was equipped with a ballasted roadbed laid with eighty pound rails; was possessed of a number of steam locomotives and freight cars of modern types and enjoyed a considerable freight business. Moreover, it had in effect through routes and joint rates with one of the great trunk lines of the middle west, and hence could readily be distinguished from the common passenger street car line.

The Commission has now, however, been once more asked to pass upon the question of its jurisdiction over street car lines. In the recent case of *West End Improvement Club* v. *Omaha & Council Bluffs Railway and Bridge Company, et al.*,[4] decided November 27, 1909, it is squarely held that

"Even admitting that in its popular acceptation the word 'railroad' usually applies to standard commercial railroads, we think it plainly evident that it was the intent of the Congress to include within the provisions of the act any and all common carriers engaged in interstate carriage by railroad. No provision of the law is repugnant to that thought, and there are no qualifying words which suggest a different conclusion. The great body of strictly street railways are engaged in serving purely local needs, lie wholly within the confines of a single state, and, by the express terms of the statute, are not within our jurisdiction because not engaged in interstate transportation. It would be a narrow, strained and illiberal construction to hold that designating an interurban railroad a 'street railway' was sufficient to excuse such railroad, when engaged in interstate transportation, from the operation of the law. So far as the practices of common carriers of passengers are concerned, interurban railroads might as certainly, to the same extent and in the same manner as any other

[4] 17 I. C. C. Rep. 239.

carrier or railroad, cause the abuses denounced by the law; they might discriminate as unjustly and charge as unreasonable fares as the railroads denominated as commercial. It follows that they are within the 'mischief felt and the object and remedy in view.' If interstate, they are clearly outside the jurisdiction of the individual state, and where they are 'common carriers engaged in the transportation of passengers or property,' as specified in the act, we entertain no doubt of their amenability to its provisions."

The opinion is written by Commissioner Clark and is exhaustively and carefully reasoned. It is to be noted that Commissioner Prouty, who dissented from the majority in the case of *Willson* v. *Rock Creek Railway, supra,* is still of the opinion that the Interstate Commerce Act does not apply to the ordinary street railway. It is also significant that Commissioner Knapp, who wrote the majority opinion in the former case, now agrees with Commissioner Prouty, and that Commisisoner Cockrell stands with them. Unfortunately, Commissioner Knapp does not explain why he has changed his views; but it is clear from the position taken by the minority of the Commission that the question must still be considered as one of some doubt until there is a final adjudication by the courts.

From a strictly legal point of view it is difficult to avoid the conclusion reached by the majority of the Commission. It is true that when the Cullom Act was passed Congress had little thought of the street car lines. But, as Commissioner Clark plausibly argues, even under the Act as originally framed, the Commission had held[5] that it applied to street car lines engaged in interstate transportation, and Congress must be assumed to have taken cognizance of such interpretation in 1906 when the Act was thoroughly overhauled and amended.[6] At the time the Hepburn Act was passed the modern trolley line had arrived. The growth of its interstate traffic was well started; its tendency to become similar to the "commercial" railway was unmistakable. Nevertheless Congress still retained the sweeping language of the original Act to the effect that it should apply to "any common carrier or carriers engaged in the transportation of passengers *or* property." That a street car line is a common carrier of passengers is too well established to require citations.

In principle, too, it would seem wise to subject the interstate

[5]Willson *v.* Rock Creek Ry. Co. *supra.*

[6]For force given to Commission's established rulings, see N. Y., N. H. & H. *v.* I. C. C. (1906) 200 U. S. 361.

trolley lines to the jurisdiction of the same Commission which has supervision of other interstate railways, in order to attain harmony and uniformity in the work of regulating transportation by rail. The argument for the public supervision of any public utility applies with equal force to street car lines. It is an elemental proposition that in respect to their interstate business such roads are subject to federal and not to state control. It is both natural and sound to suggest that that control should be exercised by the same Commission which avowedly has jurisdiction over steam railroads, express companies, sleeping-car companies, bridges, ferries and terminal facilities of every kind used or necessary in the transportation of persons or property from State to State. To create a different board to regulate interstate street car companies, would be to inject another source of confusion and conflict into the transportation industry which is already handicapped with the separate state and federal regulations.

There is, however, a practical objection to centering such control in the present Federal Commission, which will be urged with some force. Already that body has a monumental task and responsibility in the regulation of the "commercial" railways. If the Commission is to include in its work regulation of any considerable part of the street railways of the country it will be questioned whether such added burden may not prevent, or at least interfere with a rational and efficient regulation of the steam roads.

It must be remembered that it is now held by the Commission that any carrier which engages in the movement of freight by rail from a point in one State to a point in another State is subject to the jurisdiction of the Commission.[7] This is so even though the carrier in question does not extend beyond the State's border; has no arrangement for the movement of interstate traffic with the connecting line; issues no through bill of lading, and performs its part in the interstate journey wholly within the State.

There can be no different rule in the case of passenger traffic. The question is simply whether or not the shipment or the passenger departs from a point in one State to reach a point in another State in a continuous journey. If so, and if the journey is wholly by rail, it is an interstate journey and the roads making up the route become subject to the jurisdiction of the Commission.

Prior to the enactment of the Hepburn Bill it was necessary in order to subject a state railroad to the jurisdiction of the Federal

[7]Leonard *v.* K. C. S. Ry. Co. (1908) 13 I. C. C. Rep. 573; Baer Bros. *v.* M. P. Ry. Co. *id.* 329.

Commission to show that the state road and its interstate connection were used under a common control, management or arrangement for a continuous carriage.[8] But under the amended law this rule now applies only in case the shipment is partly by rail and partly by water.[9]

It will be recognized that in the great cities with their constantly widening commutation zones there are already many instances of street railways which make up a part of an all-rail journey from a point in one State to a point in another. The street railway may be only a carrier of passengers. It may collect its own fares and perform its entire part of the transportation in one town, city or suburb. Yet if it delivers at some connecting point in an all-rail journey, and possibly even at a railroad station,[10] passengers bound for a point in another State, the ruling in the *Leonard* case would seem to render the street car company subject to the jurisdiction of the Federal Commission.

In this connection it is to be observed that the typical street railway is a great and spreading system of lines consolidated into one company and serving exclusively entire communities and sometimes States.[11] If on one of its routes it engages in the movement of a passenger by rail from a point in one State to a point in another State the entire street railway company operated as a unit and of which the given route is a mere detail, becomes subject to the jurisdiction of the Interstate Commerce Commission.[12] It is true that such jurisdiction is concerned exclusively with the street railway's interstate business; but a considerable part of the work of railway regulation cannot separate state from interstate business, as for example, the important and laborious work of supervising railway accounting. Moreover, President Taft has repeatedly suggested giving the Commission power to regulate the issuance of railway stocks and bonds. If such a law were passed it would mean that every stock and bond issue of a street railway engaged in interstate commerce as above defined would have to be passed upon by the Federal Commission. The physical

[8] 1 Drinker, The I. C. C. Act § 31 *et seq.*; I. C. C. *v.* C. N. O. & T. P. Ry. Co. (1896) 162 U. S. 184; Parsons *v.* C. & N. W. Ry. Co. (1897) 167 U. S. 447; L. & N. R. R. Co. *v.* Behlmer (1900) 175 U. S. 648.

[9] Leonard *v.* K. C. S. Ry. *supra.*

[10] See 1 Drinker § 32; compare The Daniel Ball (1870) 10 Wall. 557; Rhodes *v.* Iowa (1898) 170 U. S. 412.

[11] *E. g.* Rhode Island.

[12] 1 Drinker § 29.

valuation of railway properties is another laborious and difficult task which is being constantly urged both by and upon the Commission. Would this not include a valuation of all the trolley lines engaging in the movement of passengers by rail from a point in one State to a point in another State?

Many examples might be given to show how greatly the work and responsibility of the Federal Commission will be increased if a considerable number of the street railways of the country are to be brought under its jurisdiction. The Commission is doing excellent work, however, in the matter of regulating the private management of our 230,000 miles of commercial lines now included within the purview of the Act to Regulate Commerce, and if force be given to the suggestion made by Commissioner Prouty some two years ago, and now again made by President Taft, to the effect that there should be a separation of the administrative, legislative and judicial functions of the Commission, it may then be able to take on all the added work which must inevitably come with the present interpretation of the law as applying to street railways.

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